

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 425

S. P. 190

In Senate, January 31, 1967

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Lund of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Revising the Laws Relating to Disclosures of Debtors.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 14, § 253, amended. Section 253 of Title 14 of the Revised Statutes is amended by adding at the end, a new sentence, to read as follows:

If said officer complies with the requirements of this section, no execution shall run against his body.

Sec. 2. R. S., T. 14, § 254, amended. Section 254 of Title 14 of the Revised Statutes is amended to read as follows:

§ 254. Debtor's refusal to testify

If the debtor or the officer of the debtor corporation or other person duly served with subpoena under chapter 503 refuses to testify in obedience thereto, or refuses to answer any proper questions, or if the debtor or the officer of the debtor corporation refuses to make full disclosure upon all matters named in section 3501, or if said debtor or the officer of the debtor corporation refuses to comply with any proper order of the magistrate or perform the duty imposed upon him by section 3303, he shall be adjudged to be in contempt and be committed to jail until he purges himself of such contempt by compliance, ~~or is otherwise discharged by due process of law. The warrant of commitment shall state specifically the contempt of which the prisoner is guilty.~~ If said officer complies with the requirements of section 253, no execution shall run against his body. ~~or by payment of the judgment and costs, but in no event for more than 30 days. The warrant of commitment shall state specifically the contempt of which the prisoner is guilty.~~ Any person so committed may apply to any judge of the District Court of the district in which he is committed, or to

a Justice of the Supreme Judicial or the Superior Courts, for release from such commitment, and such judge or justice, upon hearing after due notice to the creditor or attorney of record, may order the release of such person for good cause.

Sec. 3. R. S., T. 14, § 1521, amended. The first sentence of section 1521 of Title 14 of the Revised Statutes is repealed and the following enacted in place thereof:

The judge or disclosure commissioner shall be entitled to a fee of \$5 in all cases which are disposed of without a hearing. In all other cases the judge or disclosure commissioner shall receive a fee of \$10 and an additional fee of \$5 for every hour or fraction thereof beyond the first hour spent in attendance at such hearing.

Sec. 4. R. S., T. 14, § 3302, amended. Section 3302 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3302. Appraisal and setoff; no wage assignment

When from such disclosure it appears that the debtor or the officer of the debtor corporation possesses or has under his control any bank bills, notes, accounts, bonds or other contracts or property, not exempted by statute from attachment but which cannot be come at to be attached, and the petitioner and debtor or the officer of the debtor corporation cannot agree to apply the same towards the debt, the magistrate hearing the disclosure shall appraise and set off enough of such property to satisfy the debt, ~~cost~~ costs and charges. The petitioner or his attorney, if present, may select the property to be appraised. If the petitioner accepts it, ~~it may the magistrate may order that it~~ be assigned and delivered to ~~him~~ the petitioner by the debtor or the officer of the debtor corporation and applied towards the satisfaction of his demand. The debtor shall not be required to assign any sums **currently** due him as wages for his personal labor which would be exempt from attachment on trustee process under section 2602. If any particular article of such property, necessary or convenient to be applied in satisfaction of the execution, exceeds the amount due thereon and is not divisible in its nature, the petitioner may take it, by paying the overplus to the debtor or the officer of the debtor corporation or securing it to the satisfaction of the magistrate.

Sec. 5. R. S., T. 14, § 3302-A, additional. Title 14 of the Revised Statutes is amended by adding a new section 3302-A, to read as follows:

§ 3302-A. Orders respecting future payments

If the magistrate hearing the disclosure finds that the debtor has insufficient property which may be applied toward satisfaction of the judgment and costs to pay them in full, he may, in addition to any other order made with respect to assignment and delivery of the debtor's property, and after inquiry respecting the debtor's income, dependents, existing financial obligations and other circumstances relevant to the debtor's ability to pay, require the debtor to pay the judgment and costs of the proceedings in full or by partial payments from time to time from future earnings and other sources. The magistrate may prescribe

the times, places, manner and amounts of such payments in accordance with the debtor's ability to pay. Imposition of an order regarding such future payments shall not disqualify the debtor from receiving the poor debtor's oath prescribed in section 3711 if he has otherwise complied with the requirements for receiving said oath. The magistrate may at any time, on petition of either party served as provided with respect to subpoenas in section 3452 or such other notice as the magistrate may order, revise, suspend or revoke any such order on a showing that the altered circumstances of either party so require. Failure without just excuse to obey the terms of any such order respecting payments out of future earnings or other sources shall constitute a contempt of court punishable as provided in section 254.

A petition to initiate contempt proceedings may be presented to a District Court Judge or to a disclosure commissioner selected as provided in section 3452. The petition shall set forth the facts alleged to constitute the contempt, shall state the time and place of hearing and shall contain a conspicuous notice to the debtor that failure to appear at the time and place stated will subject him to arrest and possible imprisonment. A copy of the petition shall be served upon the debtor in the same manner as is provided with respect to the service of subpoenas in section 3452. Defaults at such proceedings shall be treated in the same manner as is provided with respect to defaults at the original disclosure examination by section 3505.

A sentence for contempt shall not end the proceedings, nor shall any other order made therein; and future violations of the order upon which the sentence was founded, or any other order, may likewise be dealt with as for contempt. The magistrate shall retain jurisdiction of the matter during the pendency of any such order for future payments until an order is made expressly dismissing the proceedings.

Sec. 6. R. S., T. 14, § 3401, amended. Section 3401 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3401. Unable to attend; adjournment

In case the magistrate ~~who issued the summons before whom the debtor is summoned to attend~~ is unable to attend, any justice of the peace may continue the case not exceeding twice, or any other magistrate qualified to take disclosures may attend and take the disclosure ~~and, for cause shown by either party, the examination may be adjourned from time to time.~~ The examination may be continued or adjourned from time to time on request of either party for good cause shown, except that no such continuance or adjournment shall be granted at the request of the judgment creditor without the written consent of the debtor noted upon the record of the proceedings unless such request was made prior to the time of hearing and after reasonable notice thereof to the debtor. The reasons for such continuance or adjournment shall be noted by the magistrate in his record of the proceedings kept as provided in section 3353. The fact that the parties have reached a voluntary agreement for payment of the debt in installments shall not constitute good cause within the meaning of this section.

Sec. 7. R. S., T. 14, § 3452, amended. Section 3452 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3452. Amendment of errors in application or subpoena

Such magistrate as described in section 3451 shall thereupon issue under his hand and seal a subpoena to the debtor commanding him, or in case the debtor is a corporation commanding an officer thereof, to appear before ~~any such disinterested magistrate within said county in the town in which the debtor, the petitioner or his attorney resides, or the corporation has an established place of business, or in which any officer thereof on whom the subpoena is served, resides, or in the nearest town in which there is such a magistrate or in the shire town of said county~~ the District Judge in the division in which the judgment debtor resides, or, if a corporation, in which the debtor has an established place of business, or before a disclosure commissioner, if any, in the place where the debtor resides or has an established place of business or, if none, before a disclosure commissioner in the town nearest to the debtor's residence or established place of business, at a time and place therein named to make full and true disclosure, on oath, of all the business and property affairs of such debtor. ~~A Judge of any District Court may hold disclosure court upon a subpoena returnable as aforesaid in any town in which the regular terms of the court of which he is judge are held. The application shall be annexed to the subpoena. Any town in which the regular sessions of the Superior Court are held shall be considered a shire town for the purpose of this section.~~ If the debtor is a nonresident of this State, the subpoena shall order him to appear before the magistrate to whom the application was directed as provided in section 3451. The application shall be annexed to the subpoena.

The subpoena shall clearly state that persons having no property except what is exempt from attachment or who have made an honest disclosure of the location and extent of any nonexempt property and have complied with all proper orders of the magistrate, shall be entitled to receive the poor debtor's oath and shall thereafter be free from arrest for such debt except as otherwise provided by law. The subpoena shall further state in conspicuous type: "FAILURE TO APPEAR AT THE TIME AND PLACE STATED HEREIN WILL MAKE YOU SUBJECT TO ARREST AND POSSIBLE IMPRISONMENT." No application or subpoena shall ~~otherwise~~ be deemed incorrect for want of form only, or for circumstantial errors or mistakes, when the person and the case can be rightly understood. Such errors and mistakes may be amended on application of either party.

Sec. 8. R. S., T. 14, § 3453, amended. Section 3453 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3453. Service of subpoena

The subpoena may be served by any officer qualified to serve civil process in said county by giving to the debtor or to an officer of a debtor corporation in hand ~~an attested~~ a copy of the ~~petition~~ application and subpoena ~~which said service shall be at least 24 hours before the time of said disclosure for every 20 miles' travel from his home or place of abode at the time of service to the place of disclosure.~~ The officer shall make his return of service upon the original

subpoena which shall forthwith be returned to the judgment creditor or his attorney. Service shall be made at least 72 hours before the time of the disclosure examination.

Sec. 9. R. S., T. 14, § 3551, amended. The last sentence of section 3551 of Title 14 or the Revised Statutes is amended to read as follows:

The body of the debtor shall thereafter be forever free from arrest on any execution so issued, except as provided in section 3154, 3302-A and 3305.

Sec. 10. R. S., T. 14, § 3702, amended. Section 3702 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3702. Debtor may disclose without bond

When so arrested, he may, without giving bond, disclose as provided in this subchapter and subchapters IV and IX ~~by serving the citation provided for in section 3707 upon the creditor or his attorney, allowing at least 24 hours for every 20 miles' travel from the residence of such creditor or attorney to the place of disclosure. The debtor shall pay the officer for serving the notice and keeping him from the arrest until the disclosure, before he can be discharged.~~

Sec. 11. R. S., T. 14, § 3708, amended. Section 3708 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3708. Service of citation

The citation shall be served on the creditor, or one of them if there is more than one, or the attorney of record in the action, or any known authorized agent of the creditor, by any officer qualified to serve civil process between the same parties. Service shall be made in the manner provided for service of other civil process ~~7~~ 7 days at least before the time appointed for examination, if the creditor is alive; otherwise, it shall be so served on his executor or administrator, if found in the State, and if not, such copy shall be left in like time with the clerk of the court or magistrate who issued the execution, **except that in all cases in which the debtor is in jail, such notice may be served upon the creditor no less than 24 hours before the time appointed for the examination and the costs of such service shall be borne by the county in which the jail is located.**

Sec. 12. R. S., T. 14, § 3851, amended. Section 3851 of Title 14 of the Revised Statutes is amended by inserting after the 3rd sentence, a new sentence to read as follows:

Any such sums advanced by the creditor may be added to the judgment and costs which the debtor is liable to pay, but no debtor obtaining the benefit of the oath provided by section 3711 shall be required to repay such costs of board as a condition for obtaining his release from jail.